

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIMOTHY COOLEEN,)
Plaintiff,) Civil Action No. 04-63E
v.) Hon. Sean McLaughlin, U.S.D.J.
Defendants.) Hon. Susan Paradise Baxter,
) U.S.M.J.
JOHN LAMANNA, et al.) ELECTRONICALLY FILED
)

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S OBJECTIONS
TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

AND NOW, come Defendants, by their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Paul D. Kovac, Assistant United States Attorney, and, pursuant to the Magistrate Judge's Report and Recommendation ("Report and Recommendation") (page 16), respectfully files this opposition to Plaintiff's Objections to Magistrate Judge's Report and Recommendation ("Plaintiff's Objections") .

Defendants rely upon their previous filings in this case that effectively rebut the points raised in Plaintiff's Objections and concurs with the persuasive reasoning contained in the Report and Recommendation. However, Defendants submit the following point in clarification and opposition to Plaintiff's argument regarding jurisdiction under the Federal Tort Claims Act (FTCA).

Plaintiff contends that he has "properly set forth a claim pursuant to the requirements" of the FTCA. Plaintiff's

Objections at 5. Plaintiff argues that his claim is based upon negligence due to the alleged failure of the Defendants "to properly diagnose and treat the Plaintiff's injury." Id. Plaintiff contends that the Inmate Accident Compensation Act ("IAC"), 18 U.S.C. § 4126, is not the exclusive remedy for this claim and submits that proper jurisdiction resides under the FTCA. Id.

Plaintiff is mistaken. The IAC is also the exclusive remedy for work-related injuries that are subsequently aggravated by alleged medical malpractice on the part of prison officials and doctors for the prison. See Wooten v. United States, 825 F.2d 1039, 1044 (6th Cir. 1987) ("Section 4126 is also the exclusive remedy when a work-related injury is subsequently aggravated by negligence and malpractice on the part of prison officials."); Thompson v. United States, 495 F.2d 192, 193 (5th Cir. 1974) (same); Byrd v. Warden, 376 F. Supp. 37, 38 (S.D.N.Y. 1974) ("[T]he United States is not liable under the FTCA for additional damages resulting from any aggravation of injury caused by the negligence of its employees in providing proper medical treatment since any such aggravation of injury resulted from the initial injury."). Accordingly, Plaintiff is incorrect in asserting that this Court has jurisdiction pursuant to the FTCA. —

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WHEREFORE, Defendants respectfully request that the Report and Recommendation be adopted and that Defendants' Motion to Dismiss or alternatively, for summary judgement be granted.

Respectfully Submitted,

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United States Attorney

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Dated: August 19, 2005

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2005, I electronically filed and/or served a copy of "**DEFENDANT'S OPPOSITION TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**" by first-class U.S. Mail upon the following:

Mr. Timothy Cooleen
Pro Se Plaintiff
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s/Paul D. Kovac _____
PAUL D. KOVAC
Assistant U. S. Attorney